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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,405	07/01/2003	Peter M. Wild	112830	1924
21002	7590	05/10/2005	EXAMINER	
WILLIAM NITKIN 1320 CENTRE STREET SUITE 300 NEWTON, MA 02459				GELLNER, JEFFREY L
		ART UNIT		PAPER NUMBER
		3643		

DATE MAILED: 05/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/611,405	WILD ET AL.
	Examiner	Art Unit
	Jeffrey L. Gellner	3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 18 January 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 17-19 and 43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 17-19, 43 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 18 Jan 2005
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

Information Disclosure Statement

A completed, signed second page of the IDS of 8 January 2004 (this second page now the IDS received 18 January 2005) accompanies this office action.

Claim Objections

Claim 17 is objected to because of the following informality:

In claim 17 (currently amended) the language of lines 1-3 of new language is drawn to the subcombination of a plug because of the “for use in . . .” language of line 1. In line 5 of new language, however, the language of “formed generally in the dimensions of said bore hole in xylem” is drawn to the combination of a plug in a bore hole in the xylem. Examiner considers that Applicant is claiming the subcombination of the plug and not the combination of plug and bore.

Also, in claim 17, line 10 of new language, it appears a --,-- should be placed after “plant” to match the “,” after “disposed” in line 9.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. §102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 17-19 and 43 are rejected under 35 U.S.C. §102(b) as being anticipated by Doolittle et al. (US 5,797,215).

As to Claim 17, Doolittle et al. disclose a plug (10, 10', or 10" of Fig. 2) for use in the injection of a fluid into a woody plant of the type having a xylem and outer bark, such plant having at least one bore hole having dimensions and sides drilled through its outer bark and into its xylem, the plug (10, 10', or 10" of Fig. 2) comprising a body (outer portion of 10, 10', or 10" of Fig. 2) with a body wall (outer portions of 10, 10', or 10" of Fig. 2) and an aperture defined therethrough (from Fig. 2), the body formed generally in the dimensions of the bore in the xylem, the body having first and second ends (from Fig. 2); and, a membrane (100 or 100' of Fig. 2) with a curved portion (portion of 100 or 100' that faces "out of the page" toward the viewer, in that cross-sections of 100 100' are circular as shown in Fig. 2; circular cross-sections are inherently curved) and sides (regions that touch arrows on leadlines of 100 or 100' of Fig. 2) disposed in the aperture near the second end of the body of the plug, the curved portion of the membrane directed toward the xylem, the membrane having sides that engage the body wall (see Fig 2) and disposed, when a needle carrying fluid is passed therethrough to inject the fluid into said plant, to form a reservoir of pressured fluid in the xylem of the plant (inherent when plug is placed in a bore to the xylem) the membrane forming a seal when the meddle is withdrawn (inherent when plug is placed in a bore to the xylem) wherein such pressure pushes on the curved portion of the membrane, causing by said pushing on the curved portion of the membrane the forcing of said membrane's sides outward against the body wall (inherent when plug is placed in a bore to the xylem).

As to Claim 18, Doolittle et al. further disclose first and second circumferentially curved ridges (36 of 10 in Fig. 2) near the first and second ends of the body.

As to claim 19, Doolittle et al. further disclose a slot defined in the side wall (a slot formed by the inner two ridges of 10 in Fig. 2) near the second end thereof to aid in allowing passage of the pressurized fluid into the xylem of the plant.

As to claim 43, Doolittle et al. further disclose that the plug is capable of being permanently inserted into the bore hole formed in xylem.

Response to Arguments

Applicant's arguments filed 18 January 2005 have been fully considered but they are not persuasive. Applicant's argument is: (1) Doolittle et al. does not claim a membrane having a curved portion which forms a dome-like structure facing the pressurized fluid (Remarks page 4 middle of page).

As to argument (1), Examiner considers Doolittle et al to disclose a membrane (100 or 100' of Fig. 2) that has a curved portion (edge that abuts the wall of 10, 10', or 10" of Fig. 2). The dome-like structure is not considered to be claimed.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

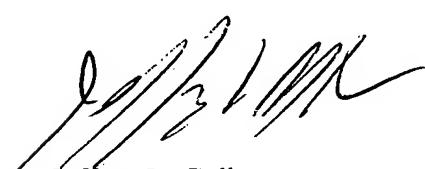
Art Unit: 3643

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose phone number is 571.272.6887. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 571.272.6891. The official fax telephone number for the Technology Center where this application or proceeding is assigned is 703.872.9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jeffrey L. Gellner
Primary Examiner